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ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS

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2006 NOV 21 P 1:31

CLINTON A. KRISLOV,  
for himself and as Class Counsel,

CHIEF CLERK'S OFFICE

Docket No: 06-0421

Petitioner,

Petition for a Declaratory Ruling that  
SBC's (d.b.a. AT&T) Billing Practices  
are in Violation of the Illinois Administrative  
Code Section 735.160(a).

**SUR-REPLY OF PETITIONER, CLINTON A. KRISLOV,  
TO PETITION TO INTERVENE**

Clinton Krislov submits this sur-reply in opposition to the Illinois Telecommunications Association's ("ITA") petition for intervention.

**"In for a penny, in for a pound."** Petitioner ITA is seeking to be an active party intervenor in this action for its members, but without subjecting themselves to the obligations of a party intervenor. What the ITA ignores is that once intervention is granted, the intervenor becomes a party for all purposes (*See* 220 ILCS 5/10-110); (*cf.* 735 ILCS 5/2-408(f)) ("An intervenor shall have all the rights of an original party. . .") and, thus, having injected itself into the proceedings, cannot complain about its obligations as a party to the proceedings, (*cf.* *Alexander Lumber Co. v. Kellerman*, 271 Ill.App. 571 (2<sup>nd</sup> Dist. 1933) ("[intervenor] having voluntarily entered his general appearance in the court below, and proceeded to a full hearing of the bill upon the merits, submitted himself to the jurisdiction of the court, and cannot now be heard to complain."), including having to respond to discovery. *See also* *Matviuw v. Johnson*, 111 Ill.App.3d 629 (1<sup>st</sup> Dist.1982). Having insinuated themselves as a party to the proceeding

and been granted party status, due process cannot shield them from a parties' concomitant obligations. Under section 5/10-110 of the Public Utilities Act, the parties (including intervenors) are "entitled to be heard and to introduce evidence." Thus, the ITA cannot intervene for its members then limit their obligations or pick and choose how they will participate in the action as an active party.

Furthermore, there is no associational standing in this case, a federal doctrine recognized in Illinois. *Int'l Union of Operating Engineers, Local 148, AFL-CIO v. Illinois Dept. of Employment Security*, 215 Ill.2d 37, 51 (2005). In order to obtain associational standing, an organization must meet the three-prong test:

"[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

*Id.* at 47 (internal citations omitted); *see also Retired Chicago Police Ass'n v. City of Chicago*, 76 F.3d 856, 863 (7<sup>th</sup> Cir. 1996). While the ITA members may well be interested in the outcome, the only member who has any standing at all is AT&T Illinois.


The parties agree that the ITA has no real interest here. The dispute in this proceeding involves only the legality of late charges AT&T Illinois imposed on Krislov without a date postmark on the bill envelope. (ITA Reply at 2, 4). How that binds or affects ITA's members escapes us. The ITA wants to do is insert itself to advocate on its members' behalf, but with the effect of its members evading an adverse result. The ITA's assertion that Krislov's objection to the intervention into a "thinly disguised attempt to convert this docket into a class action involving both defendant and plaintiff classes" has no basis. We surmise that the ITA fears a holding that AT&T's practices fail to comply will eventually be cited authority that some of the

other ITA members also fail to comply. If ITA's members have no connection to Krislov, they're not entitled to intervention. However, if the court grants the ITA's petition to intervene, then they are parties to the proceedings.

Krislov's requests for discovery of the members whom the ITA purportedly seeks to represent is not unlawful. Since the ITA is intervening as the representative for its members (*see* ITA Petition 2-3), they have subjected themselves to the same discovery obtainable from other parties.

WHEREFORE, Petitioner Krislov objects to the ITA's intervention, but will withdraw the objection as long as the ITA's members are subjected to discovery and also bound by the outcome of the proceedings.

Dated: November 20, 2006

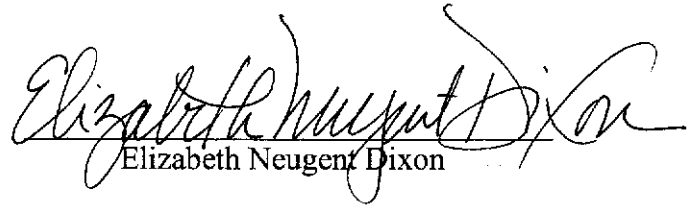


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**CERTIFICATE OF SERVICE**

I, Elizabeth Neugent Dixon, an attorney, certify that a copy of the foregoing Sur-Reply of  
Petitioner, Clinton A. Krislov, to Petition to Intervene was served on the service list on  
November 20, 2006.

  
Elizabeth Neugent Dixon

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